

89-256

Supreme Court, U.S.

FILED

MAY 16 1989

JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
APRIL TERM, 1989

JAMES TRIPLET, PETITIONER

VS

RUNA TRIPLET, RESPONDENT

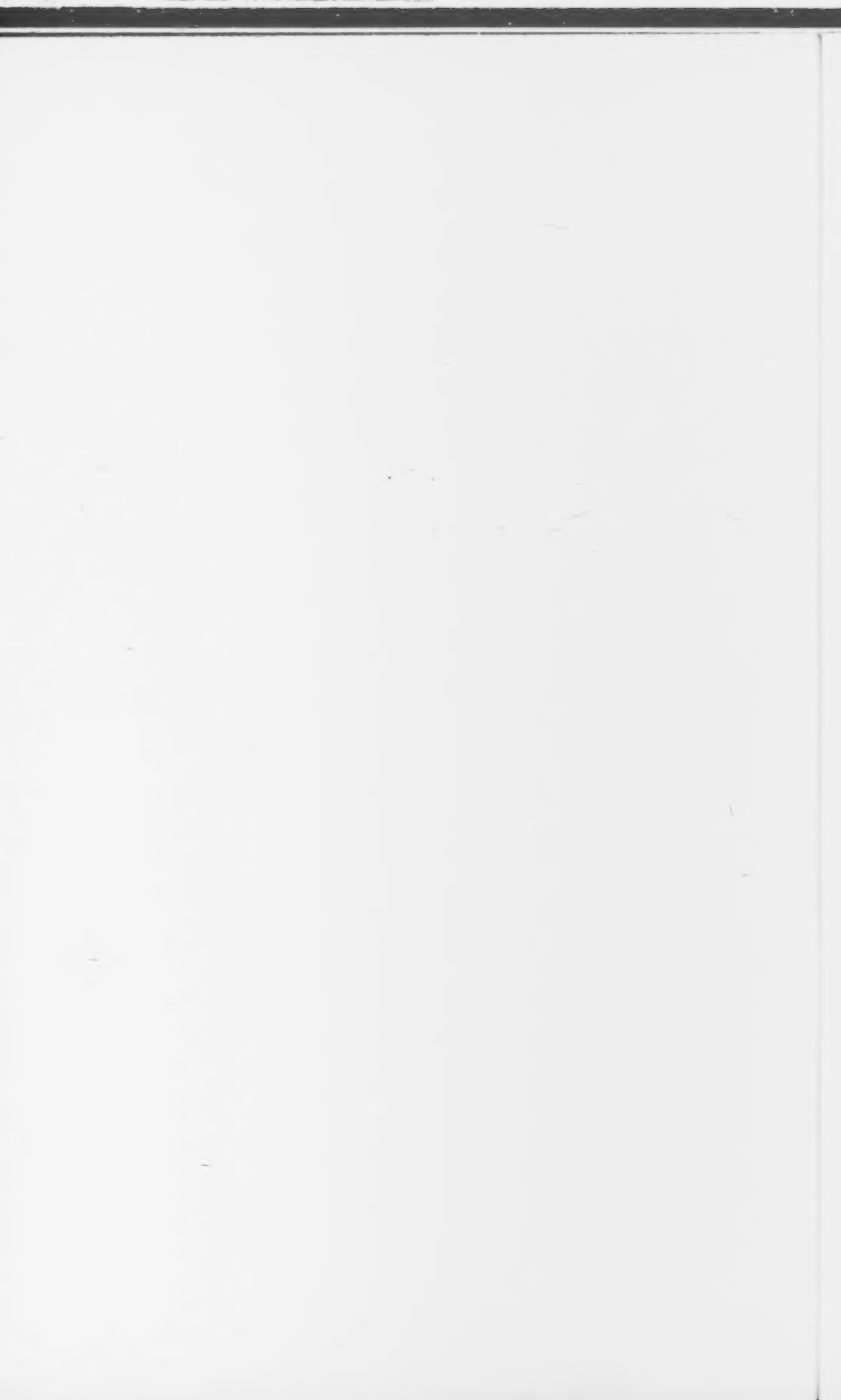
PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO,
FRANKLIN COUNTY, OHIO

PETITION FOR WRIT OF CERTIORARI

James Triplett
85 East Gay Street,
Suite 804,
Columbus, Ohio, 43215
614 221 0023

QUESTIONS PRESENTED

1. (A) Does the Ohio Constitution for guaranteeing a fair trial by an impartial judge properly allow a complaintant, and does the Ohio Legislature allow a reasonable process of their statutory rule making authority for a fair trial by an impartial judge, both, allow for a reasonable time to file a prejudice and bias affidavit? (B) And when the Chief Justice trier judge neither hears evidence of bias and does not stay proceedings, is this a failure of due process hearing? (C) And when the Chief Justice or designate takes no evidence against the accused trier on the specific prejudice and bias, is such conduct above described in (A), (B), (C), contrary to Ohio and Federal guarantees for an impartial trier to hear the case ?



2. (A) Is it, when written motions are tendered by petitioner to (i) plaintiff, (ii) plaintiff counsel, (iii) the trier, (iv) the court clerk, and refused by each one, such motions, are, by law, proper notice to the trier to make a decision for the requested issues to be decided by the trier? (B) Is it, substance wise obstructing justice by all 4 persons? (C) And does failure to make a decision on such nonfrivolous motions reversible error? (D) And does such failure violate the due process US Constitutional guarantees allowed by petitioner in a court proceeding?

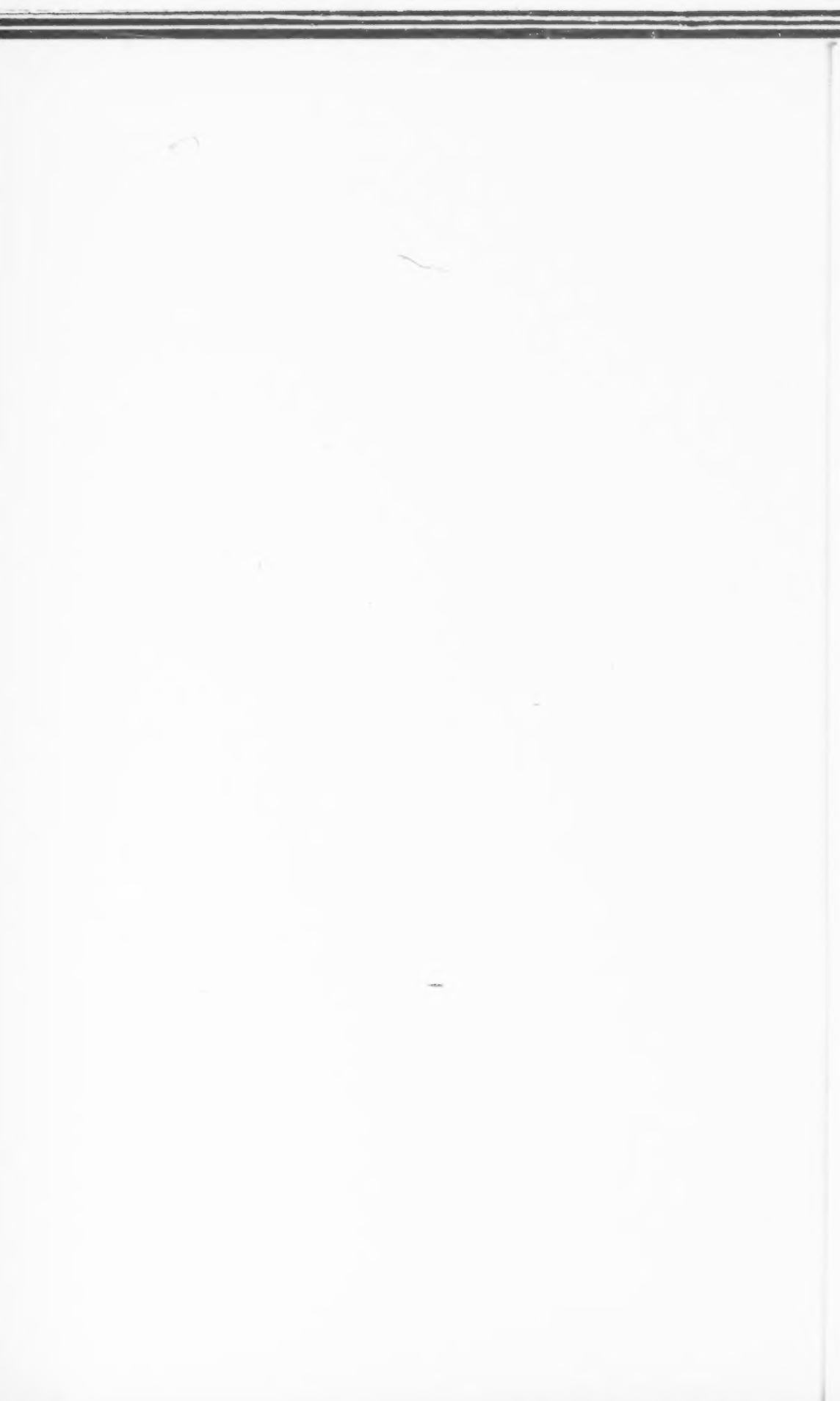
3. Does the trial court commit reversible error, when, during the due process hearing, the respondent files with the trial court a statutory required affidavit listing assets of \$440,000.00, and liabilities of \$ -0-. Then petitioner for a new trial pre-



sented un rebutted evidence that assets were reasonably \$440,000.00, but liabilities were \$500,000.00. And when the trier is from such new facts suppose to divide assets and liabilities amongst the parties and fails to, does the trial court commit reversible error?

4. When, at a trial proceeding which is proceeding on time and the trier is actively doing court business, and the party without any provocation whatsoever, tenders three motions to the trier, and the trier tells the party to get out of the court area when the party is on time and required to be in the court area for hearing purposes, is the trier criminally 'Obstructing Official Business'?

5. Does the plaintiff counsel for respondent 'Obstruct Justice' when as an eye witness knows the trier is falsely stating in a court proceeding



that no three motions were ever tendered, when plaintiff counsel was tendered copies of the same motions two minutes previous to the trier's motions being tendered? And does plaintiff counsel have a bar duty to correct the falseness for the record and/or report such perjury by the trier?

6. Does the petitioner have under due process the right to new trial, (i) when respondent party's counsel and trier start the trial by agreement one hour later without the other party's knowledge, (ii) and when respondent counsel is an eye witness to seeing the other party just outside the courtroom, (iii) And then goes inside the court and tells the trier he does not know where the other party is, (iv) and the other party cannot participate in the hearing because of such conduct?



7. Is it, when two eye witnesses testify the trier and bailiff did not call the case, (i) and they say the trier is lying when the trier testifies he did, (ii) he is contradicting the two, (iii) and is not allowed to judge those issues and the witnesses, under Ohio and Federal Rule of Evidence 605?

8. Does the court without statutory authority have a right to convert real and personal property to the other party without the other's consent, since case law in Ohio and many other States does not allow 'real estate partition' suits in divorce actions without the consent of both parties?

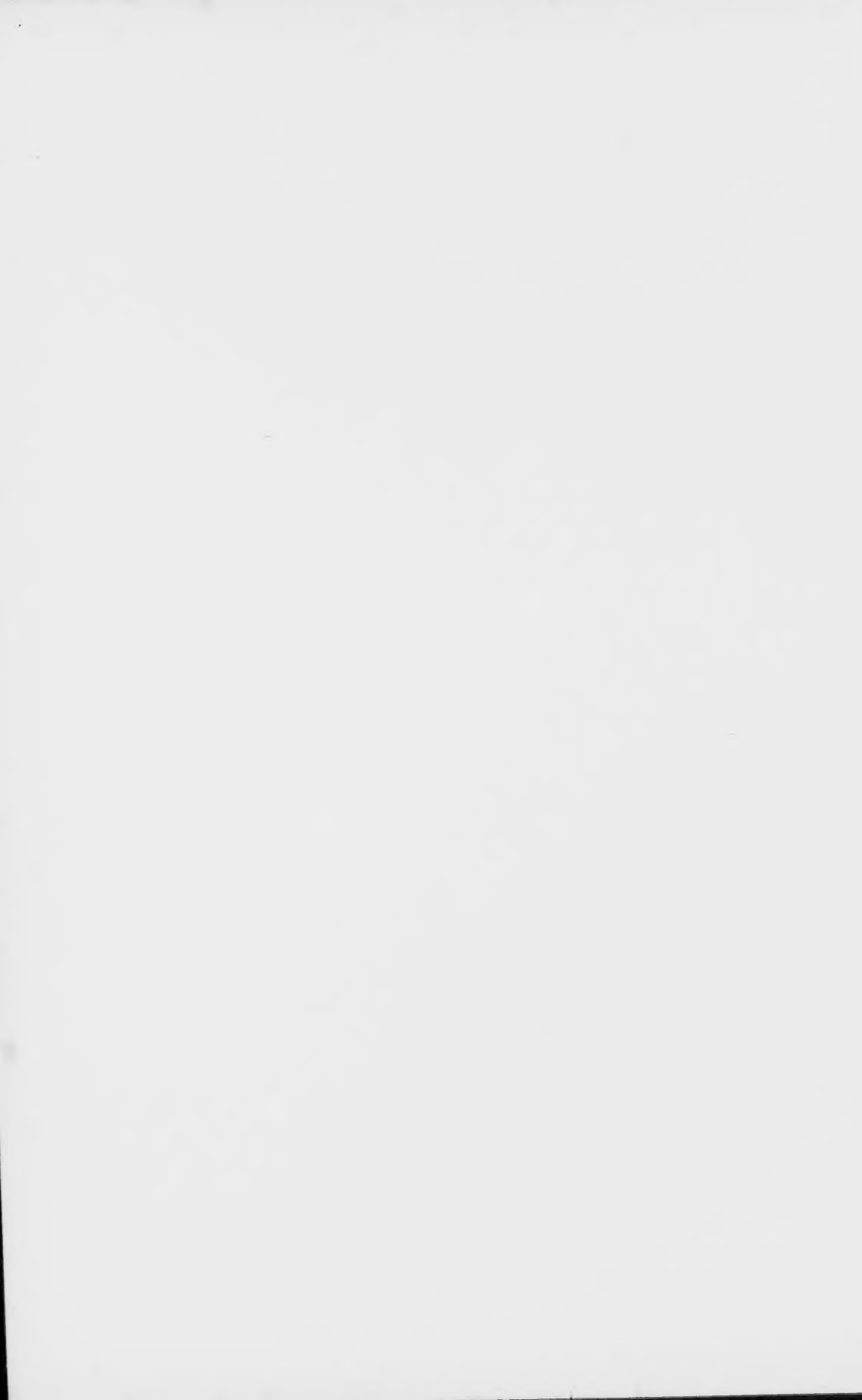


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STATEMENT OF THE CASE

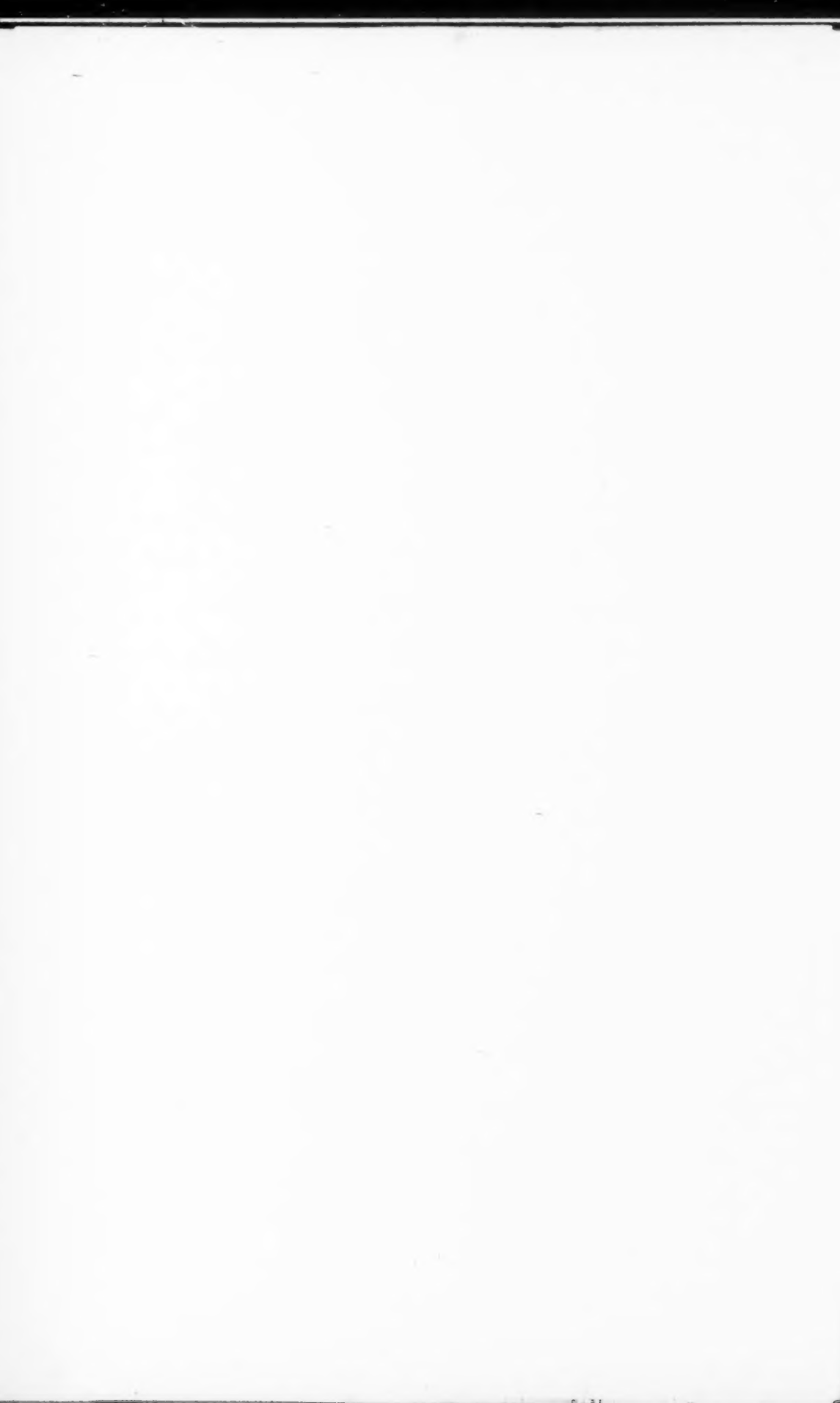
Petitioner states the basic facts and law of the case by showing this US Supreme Court when and how error and misconduct occurred by respondent, trier, and respondent counsel. On Oct 8, 1987, a trial hearing at 9:00AM was noticed to the parties. Petitioner at 8:45AM tendered three motions.¹ to the Clerk of Court, respondent, respondent counsel, and the trier. All refused their copies. All were then guilty of (i) denial of due process of this petitioners rights (US Constitution XIV), (ii) Ohio Revised Code (ORC) 2921.32, Obstructing Justice, (iii) ORC 2921.31, Obstructing Official Business, (v) ORC 2921.44, Dereliction of Duty, (vi) ORC 2921.12, Tampering with Evidence. And also for the trier and counsel, (i) Ohio bar standards, Disciplinary Rule (DR0 7-102, Representing a Client Within the



Bounds of the Law, (1), (3), (4), (5), (6), and (8), (ii) DR 7-105 Trial Conduct, 7-106, (5). Then when petitioner tendered the trier the motions, the trier told petitioner to get out of the courtroom area, unless petitioner was a lawyer. Againsts nearly all of the above cited statutes, bar rules, constitutional rights apply to the trier's statement of telling the party, this petitioner, to depart the court premises, otherwise criminal trespass.

Petitioner proceeds to file an Affidavit of Prejudice or Bias² immediately thereafter in and around the hallway of the courtroom for the triers' conduct. After approximately 45 minutes, with several interruptions, petitioner begins the rounds of tendering the Affidavit and is stopped by the 1st person, the Clerk of Court. The official court clerk and adjunct clerks argue and after considerable time, accept

²See App 9



the affidavit at 10:19AM by time stamp -
ing the affidavit. Then petitioner
proceeds to tender affidavit to the
trier and trier's bailiff states she
will take affidavit to trier. Bailiff
after one minute come back and tells
petitioner, trier has affidavit. None
of the above happened before the court
stenographer and therefore, there is
no record of motions and affidavit in
the trial docket.

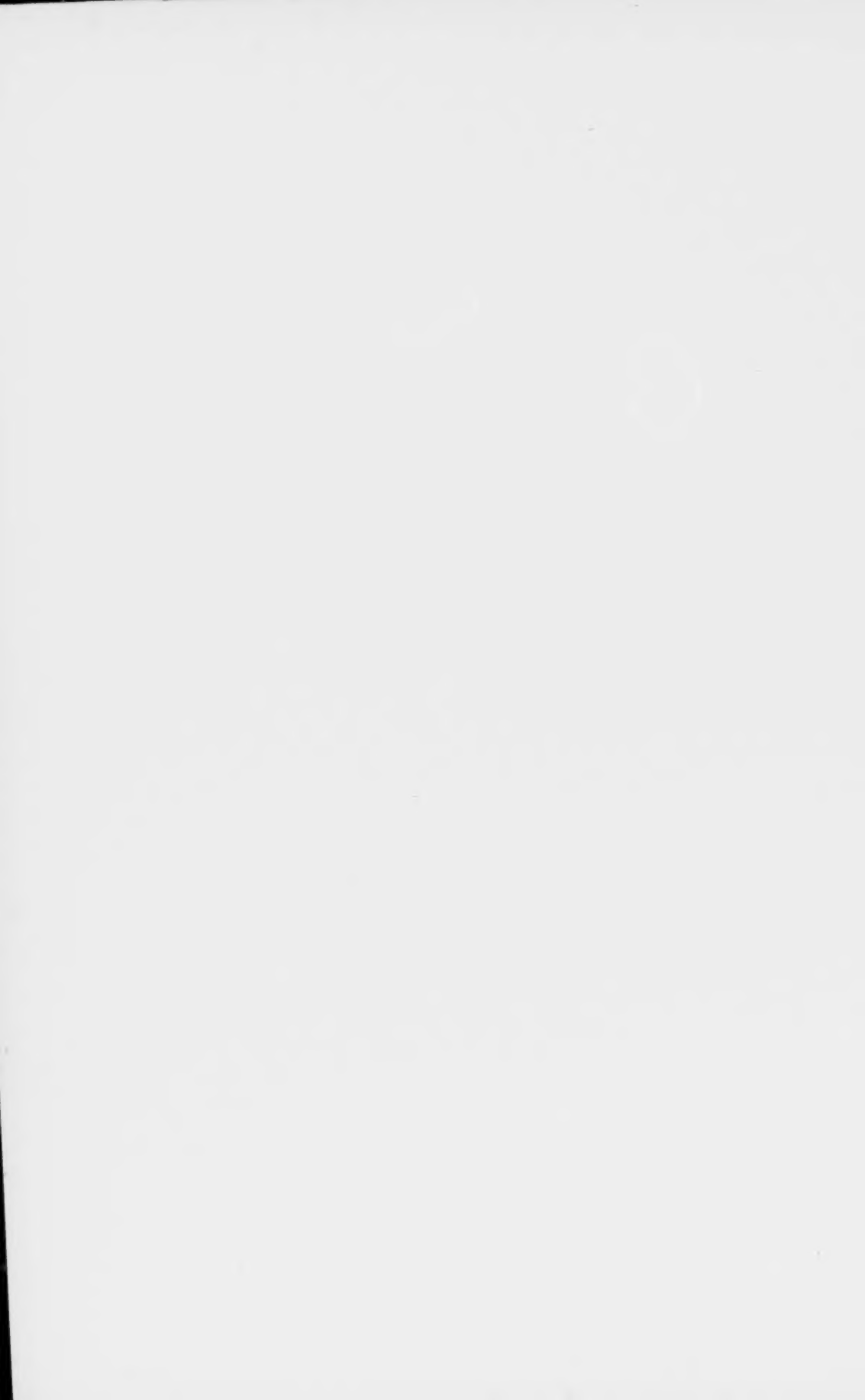
In Ohio, there is the Ohio Con-
stitution assigned to protect one when
impartiality of a trier becomes an
issue. Further, the legislature in
1985 amended the 'how to' process.³
It limits the 'passing' of whether
or not the trier is impartial to
eight Ohio Supreme Court Justices
located in Columbus, Ohio. The
legislature does not require a hear-
ing, but a 'passing' by the Justice.
The Ohio Constitution tells the

³See App 2



Justices, they 'may' make rules thereto, but none exist in writing or otherwise. Petitioner, by case law,⁴ has the right by law of an automatic stay of proceedings until the Chief Justice passes upon the affidavit. It was 'passed' upon against petitioner, October 23, 1987. And without any of the necessary evidential contact with party or trier according to petitioners' telephone call to the Chief Justice staff employee. This failure is addressed in this petition as Question Presented #1, page i herein. Of equal importance in this case, is the trier stayed nothing and numerous proceedings were reviewed, filed, and approved by the trier between October 8, 1987, and October 23, 1987. Likewise, the Ohio Supreme Court clerk failed to perform the legislative required notice to the trier to

⁴See App 2,2a page 4



stay all proceedings of the trier. But in spite of the failure,⁵ petitioner tendered and noticed the trier of the Affidavit of Prejudice on October 8, 1987, as previously stated.

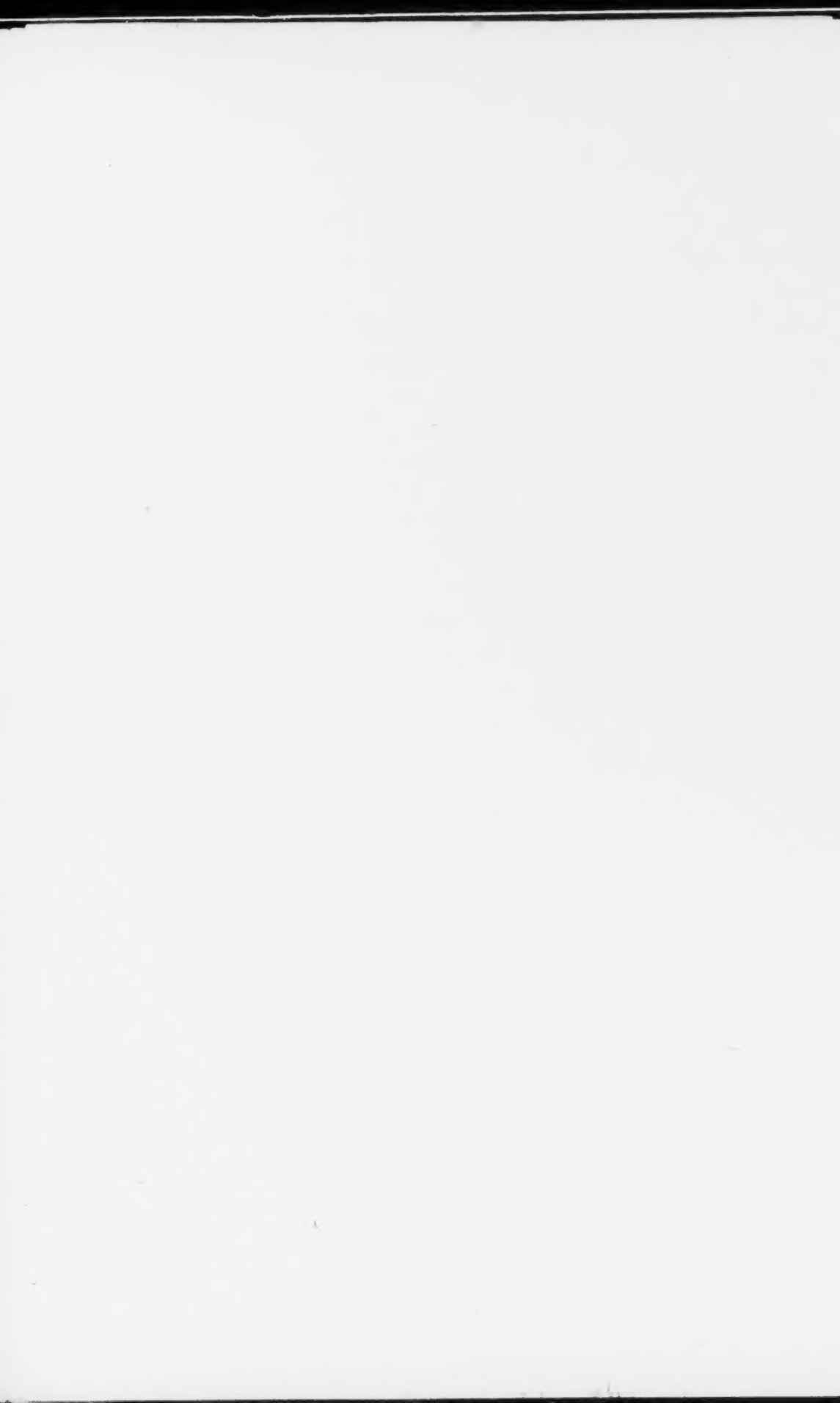
Appellate Court did not address the above facts based on prior case law that cited only that the Ohio Supreme Court Justices can rule on such affidavit. This is absurd. The Justice held no hearing where evidence was given or taken. And since there was no hearing, the Appellate Court has no record to review for error. In this instant case, the trier's bias was obstructing justice of pressing a trespassing claim against petitioner, when petitioner had business, then and there, to conduct. Trier was obstructing justice in the Court. There should have been a record for the Appellate Court to review. The Ohio Supreme Court should have had a hearing and transcript made re-

⁵See App 2, 2a, 9

viewable for the Appellate Court to weight the evidence and reverse if any error. A basic failure of due process which was specifically addressed by the framers of the US Constitution. As it stands, only the US Supreme Court by Writ of Certiorari can review this type error of an impartial judge issue. And then, this High Court must do it without a transcript of the proceedings.

Question presented in Number 2 to this US Supreme Court is the obvious, must the trier rule on all three motions, when they, by Ohio law, are legally before the trial court for ruling?⁵ Obviously, the trier cannot rule on motions he refused. However, the trier, or his staff, had a duty to inquire as to any questions or issues the Affidavit of Prejudice implied or alleged. It follows, therefore, the proceedings must go back to the trier for ruling on

⁵See App 4



the three motions, and then have the trial hearing, notwithstanding the issue raised in Question Presented #1. ⁶

Question Presented # 3; On October 13, 1987, respondent files in Ohio law required financial statement, subject to the perjury statutes listing \$440,000.00 assets and no \$ -0- liabilities. Petitioner, on motion for a new trial submitted un rebutted evidence that there is \$500,000.00 liability claim existing and was not filed with respondents' statement. The respondent was on notice by petitioners' exhibits, September 14, 1987 which is prior to October 8, 1987 trial, of such liability. Again (i) ORC 2921.32, Obstructing Justice was violated by respondent and counsel, and (ii) trier, by ORC 2921.31, Obstructing Official Business, failed to address such enormous \$500,000.00 sum in liability of both parties. A casual reading of

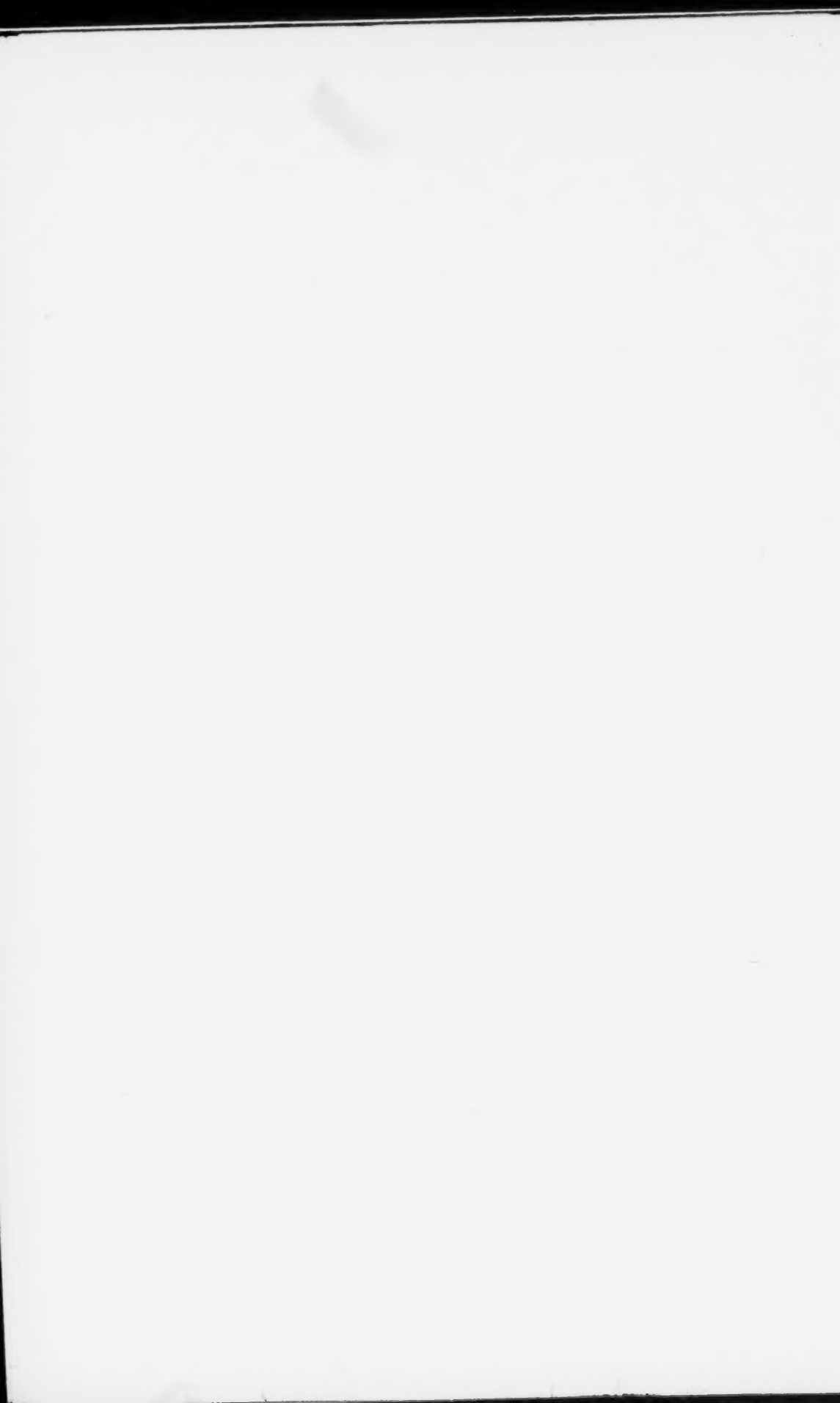


of the decree filed October 9, 1987,⁷
states the joint tax liability of
\$500,000.00 is this petitioners' debt
only. This in of itself by Ohio case
law is not allowed,⁸ and thereby, denies
equal protection of the laws and due
process of law guaranteed by Ohio and
US Constitutions.

On the statement of the case, in
the matter of Question #4, the pet-
itioner adequately has addressed this
issue above herein, but merely adds
that surprise or not to the trier, a
party has equal right to the court
proceedings as does the trier. There
was no provoking the trier by the party
at that moment or anytime previous.
The trier has simply streamlined pro-
ceedings before him to the point, and
beyond the point, that many party's
rights are compromised by the speed
of his docket. And now when a right
or rights are demanded or requested
they are hastily denied. But the trier
has forgot or does not care or feels

⁷See App 27 page 8

⁸See App 3 & See App 29 & 30



too omniscient that the Ohio
Legislature enacted laws for any
of his criminal conduct. And
generally speaking, superior courts
reverse judgment and make case law
from such conduct of a trier

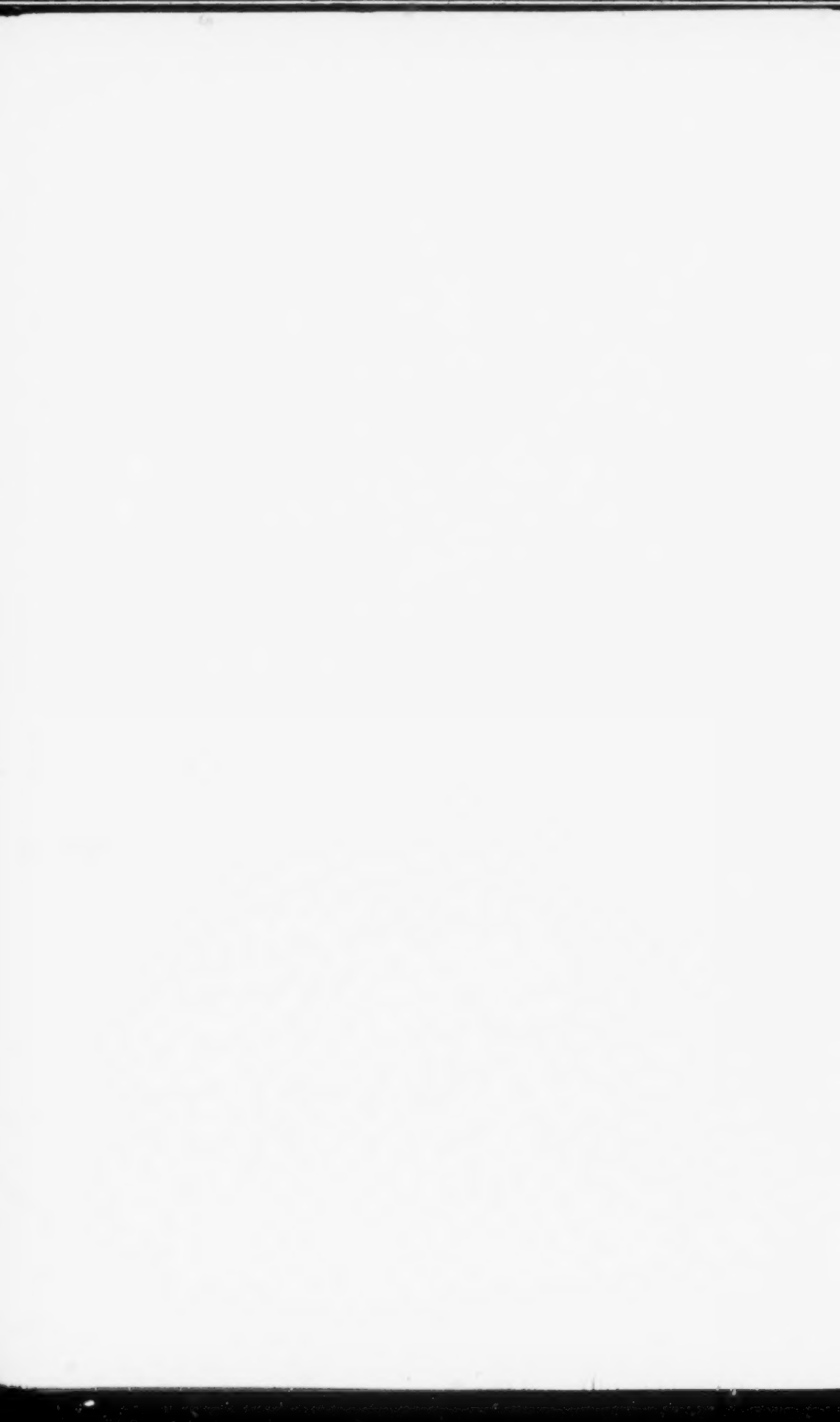
To continue the statement of
the case as regards to Questions
Presented# 5. A motion for new trial
was requested and hearing was had.
Petitioner at hearing stated all the
scenarios previously stated of tendering.
Trier testifies there were no three
motions, but this petitioner wanted to
use a copy machine. That does not wash
because petitioner brought ample copies
for everyone to the court hearing. It
is simply a trapped trier, lying. A
justice has seen such conduct in their
trial experience by witnesses test-
ifying before them many times. It is
also called perjury. But rarely is it
the trier. But Question #5 presented
to this most High Court, is does the
other bar members in the trier's court

who knows the trier is perjuring himself required to straighten the record instantly. Since in this case, the respondent counsel was tendered the three motions before the trier was tendered his three motions. The question this petitioner raised in the Appeal Court later was never answered and avoided by the Appeal Court.⁹ The new trial transcript shows petitioner tendering to all, the three motions, and the rebuttal is by the trier talking about a copy machine use. Contrary to Fed Rule of Evid. 605, Competency of Judge As Witness.¹⁰ A trier is not allowed to hear a matter that he testifies to or is contradicting the testimony of any eye witness, this petitioner. The trier twists logic, fact and law and makes perversion of the trier's 'Findings of Fact and Conclusion of Law.'¹¹ The trier, with a sworn statement of not being impartial because of his conduct with the three motions, tells

⁹ See App 10-21 page 10

¹⁰ See App 3

¹¹ See App 22-26



in his findings suggestively the motions were never before him. This High Court should decide can a bar member, respondent counsel, knowingly obstruct justice when the minimum bar standards require an immediate reporting of perjury and/or falsification of testimony by the trier to the other parties in the case? The trier in fact,¹² states that if he refused the motions, 'then the motions were not properly filed, served or before the court at the proper time'. Illogical, the trier cannot refuse them and the clerk of court cannot refuse them, according to law.¹³

To continue, to Question # 6, the hearing for a new trial had two eye witnesses in the hallway of the courtroom swearing that the case was not called by the bailiff as the trier testified she did. The trier would not allow the bailiff to be questioned about it. The trier testified, contrary to Federal and Ohio Rule of Evidence 605 when the trier

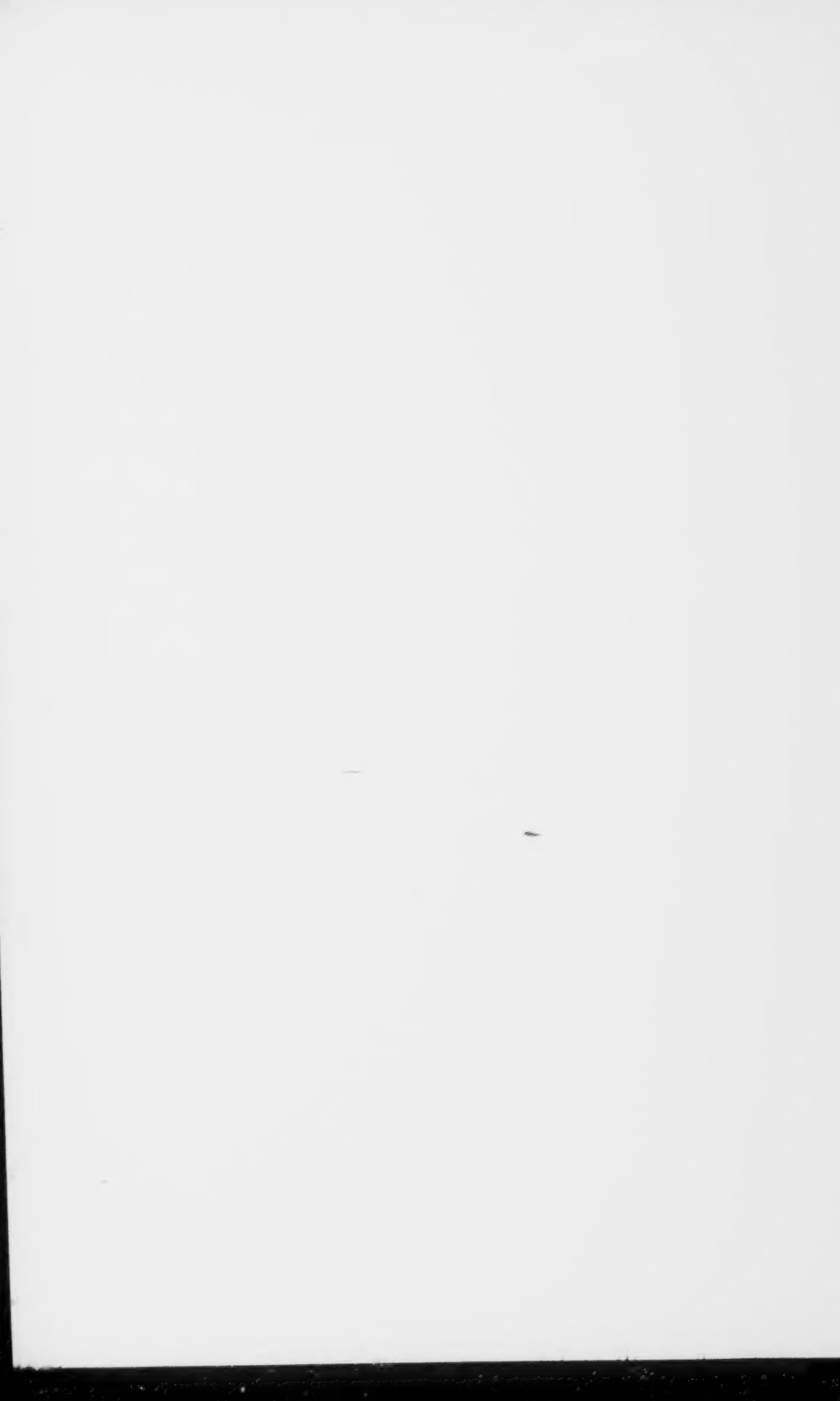
¹²See App 23

page 11

¹³See App 4



will be judging his own testimony. Even more important though, respondent counsel came out into the hallway of the courtroom, asked where this petitioner was and with two eye witnesses told counselor where this petitioner was, and counselor states he sees petitioner. Witness offers to get petitioner for counselor, and counselor replies no. Then counselor goes into the courtroom, where it is claimed that trier asks where petitioner is at to the counselor. Counselor under oath stated he did not know where petitioner was at. When in fact, counselor saw petitioner one to two minutes before and a witness offered to get petitioner for his information. In Ohio, the law is applicable to all, and counselor was guilty of (i) Denying petitioner his right to attend a trial that the trier and counsel understood was about to happen; denial of due process of a citizen's right (US Constitution XIV, (ii) ORC



2921.32, Obstructing Justice, (iii) ORC 2921.45, Interfering with Civil Rights, (iv) ORC 2921.31, Obstructing Official Business, (v) ORC 2921.44 Dereliction of Duty, (vi) ORC 2921.12, Tampering with evidence to give, (vii) ORC Falsification, giving false statements to the trier, when counsel knew where petitioner was at. There is no need to cite minimum bar requirements that recite the same thing. Needless, to say the trier met this serious occasion, by saying he knew of no statute, ordinance, or rule requiring counselor to give the trier truthful facts about the whereabouts of the petitioner.¹⁴ Of equal importance, the appeal court does no better, and quite possibly because of the trier not knowing this petitioners' knowledge of the numerous laws counselor was violating. As is described heretofore. The appeals court suggests the trial court has the best weight

¹⁴ See App 24 page 13



weight of the evidence as to whether counselor did or did not give false facts to the trier.¹⁵ The appeals court though supports the view that trier did not order party to leave the courtroom area as in criminal trespass. The appeals court states petitioner voluntarily left.¹⁶ The weight of the evidence is simple, the counselor saw petitioner and told the trier he did not know where petitioner was; when in fact he knew.

Question Presented # 7 has been injected several times above. It is simple, there were two eye witnesses swearing the bailiff did not call the case in the hallway outside the courtroom in the motion for a new trial. The trier admonishes petitioners' counselor for lying to the court. The trier absurdly denies that he just heard two witnesses call him indirectly and directly a liar. The trier said the bailiff called the case in the hallway. This is the perfect reasoning for such Ohio and Federal Rule of Evid 605.

¹⁵See App 18 & 19 page 14

¹⁶See App 16 & 17



A justice is not competent to hear evidence that he is contradicting, and that the trier is also an eye witness. Also, the trier refusing to allow the bailiff to testify, after a motion was made to introduce the bailiff's evidence leads anyone to impeach the triers' contradiction of the two eye witnesses as to what the bailiff did or did not do.

Finally, to continue to Question Presented # 8. In Ohio, court are only allowed to give a divorce under the carefully written legislative law. There was two pieces of allegedly jointly owned property and (i) they should have been sold and (ii) the proceeds paying off debts, and (iii) then cash balance divided. Obviously, since petitioner was not allowed manipulatively to attend the hearing, there was no consent given to the court or other party to the conversion decreed in the real property.¹⁶

¹⁶See App 3



CONCLUSION

It is self evident that this petitioner arrived at trial and properly tendered motions. And when all refused the, including the trial judge, it became clear to petitioner that being ordered out of the courtroom area and the refusal amounted to no "...adequate hearing and an impartial tribunal free from any interest, bias, or prejudice."¹ The trier was noticed of petitioners' claim of bias one hour later and proceedings should have been stayed, but were not. Petitioner under due process rights should have additionally been allowed to give evidence to the Ohio Supreme Court justice at a hearing, but no hearing was held, so petitioner could prove bias. And a hearing must be held to find the truth of

1 Footnote: The Reno, CCANY 61 F2d 966,968



of the matter.

This case shows the US Supreme Court that for all cases, civil and criminal across the land, (i) no hear- has to be held, (ii) no review for error by an appeals court can be had, (iii) the numerical odds are the US Supreme Court will also not review it, (iv) and parties have no remedy should the trier resist removal.

In question #2, the law is clear. When persons required to accept papers and they refuse them, tendering the papers is more than adequate. They by law must suffer any of the consequences such as not having knowledge of their contents. And petitioner should not be penalized through due process for their resisting. At this writing, petitioner is the one damaged. It is well settled, strict criminal laws are in place for obstructing court business. And petit-



itioner has clearly detailed it through error review. And the bar at lower level is using unwritten laws that obstructing does not apply to them, but to only parties or witnesses who obstruct. Certainly, equal protection of the law does have merit and equal protection error should at minimum cause a new trial.

Question #3 is reduced to (i) Ohio requires a sworn statement of assets and liabilities by respondent (ii) the sworn statement to the trial court was perjury in light of new facts by petitioner, (iii) trial court used false statements to reduce parties to divorce and settlement of assets and liabilities, (iv) trial court refuses to divide the new fact of \$500,000.00 debt amongst the parties.

Question #4 is also without a need to debate. Parties are on time at trial



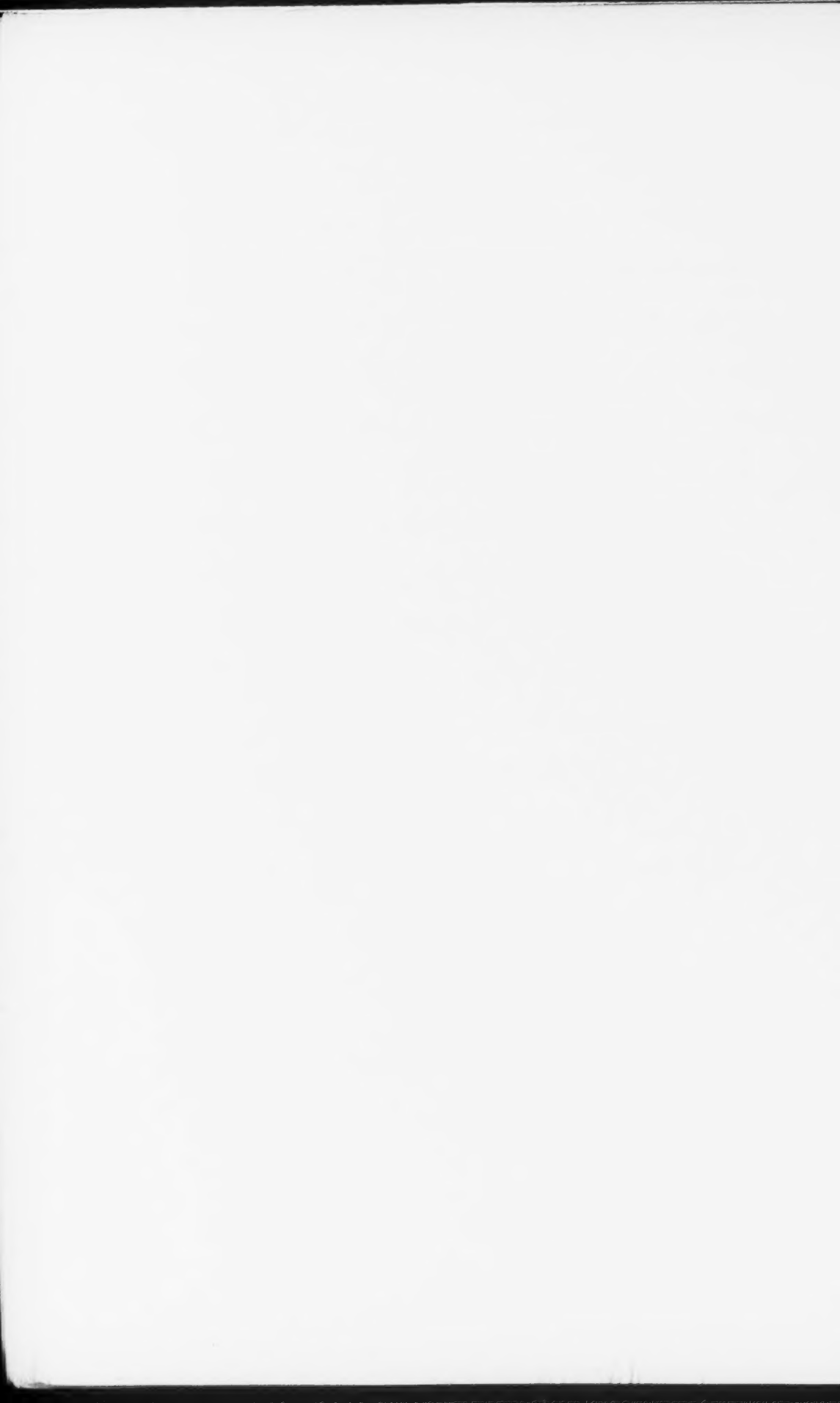
and trier orders petitioner out of the courtroom area after tendering the motions to trier and respondent counsel. Trier should not only expect an affidavit of bias, trier should not expect petitioner at trial. And without any notice, plaintiff counsel and trier are in accord and agreement to call case without this petitioners' knowledge of such pre set time. It properly is called obstructing official business. To the observer, a conclusion can be drawn by asking; how did the trier and respondent counsel both know the case was going to happen in the next few minutes?

Question # 5 is an effort by petitioner to impeach the trier's findings and testimony. By new trial transcript, the trier states no motions exist and that trier kicked petitioner out of the courtroom because petitioner wanted to use a court copy machine. More to the

point, respondant counsel was an eye witness, (i) to petitioner being ordered out and (ii) knew petitioner was presenting trier with motions, and (iii) trier is falsely testifying. And petitioner being knowledgeable with bar standards and obstructing knows respondant counsel must report to petitioner this falseness and correct any record allowing having such perjury.

Question #6 Reducing this error to reversal is when respondant counsel falsely tells the trier he does not know petitioners whereabouts. When, in fact, counsel saw petitioner just outside the courtroom before going into the courtroom. The motive being to avoid petitioner from exercising any privileges and rights at hearing.

Question #7 is worthy of this Court's attention, since the trier was an eye witness as to how he and the bailiff called the case. It should be reversed



on error (i) trier refused to allow bailiff to testify, (ii) trier refused to recuse himself when trier contradicts petitioners' two witnesses that swear he never had bailiff call case in the courtroom hallway, (iii) trier was judging his testimony that petitioner and witnesses states is false.

Question #8 requires that the trial court must have legislative authority to convey real and personal property to the other party in divorce. The trial court has no such authority and the case law is well established.

It is incumbent upon the United States Supreme Court to define what it will and will not tolerate at trial. This Court should weigh the value of requiring parties and triers to behave in a manner already prescribed by law. Most of error complained of by petitioner were bar members attempting to be above the law, but were caught.

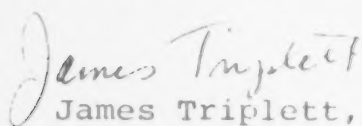
Sincerely, *James Triplett*
James Triplett

STATEMENT OF JURISDICTION

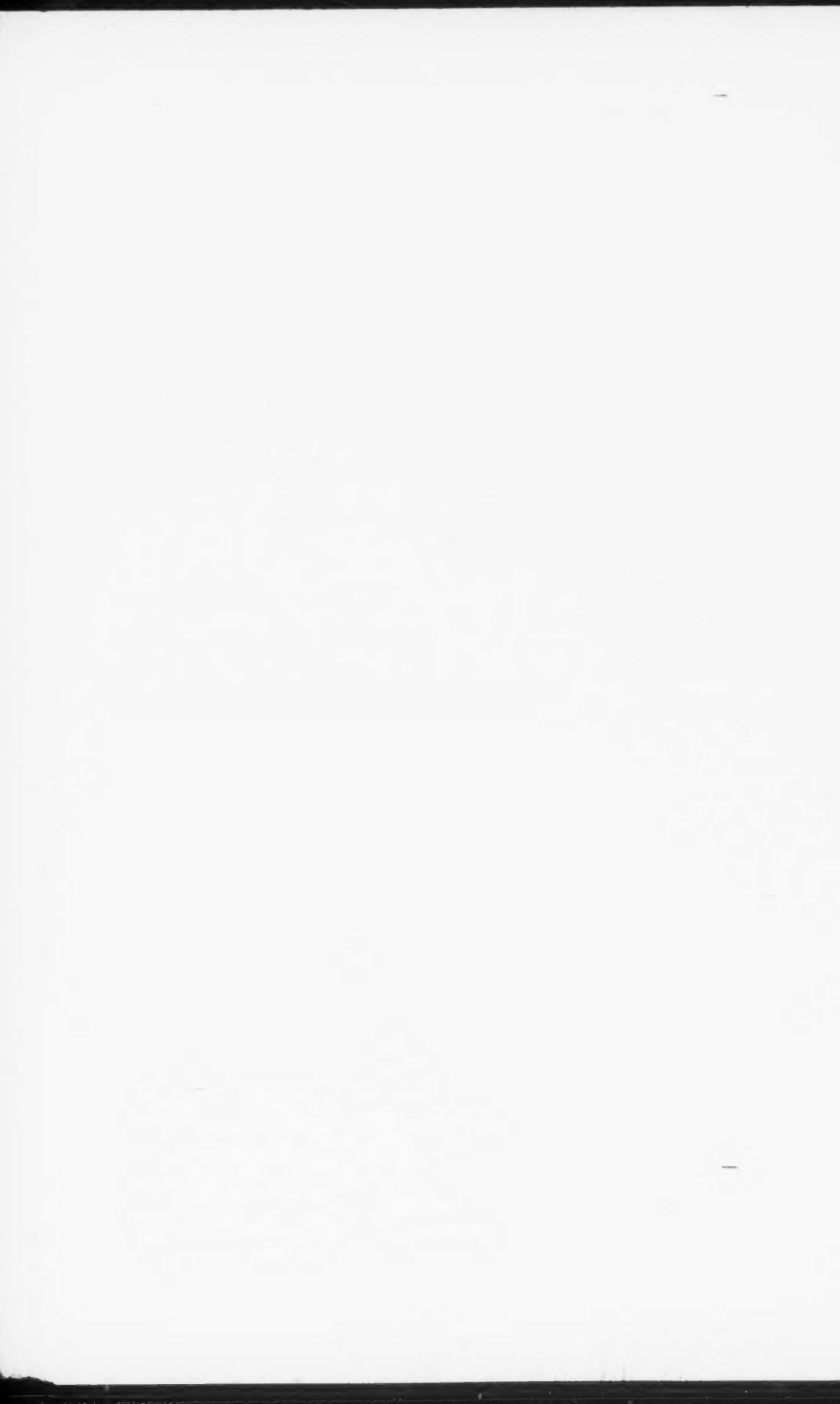
Petitioner request of the US Supreme Court to exercise jurisdiction, pursuant to Amend V, the due process provision, Amend XIV, Section 1, (1868), ' ...

No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the US; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law....'

Respectfully submitted,


James Triplett, Petitioner

Please refer to questions presented for the grounds.



State of Ohio
Franklin County

Affidavit

I, James Triplett, Petitioner herein
depose and state that I deposited in
the US Mail, 1st Class, postage prepaid
three copies of this Petition for Writ
of Certiorari on 10 August, 1989 to
Runa Triplett, 3019 Avalon Road, Columbus
Ohio, 43221.

James Triplett
James Triplett

Sworn and subscribed to before me this
10 day of August, 1989.

Nick Siculan
Notary



NICK SICULAN
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

James Triplett, Known Assets As of
10/8/87 Appraised Value

Salary (Est) Cemetery 40,000.

Real Property, Jointly Held

1. Martial residence 82,000.

2. Apt Bldg 200,000.

Auto

4 Cars 39,500.

Loans Acct Receivable

Loan to Individual 30,000.

Income of Apt 33,600.

Bank Acct or Invest

Acct Discoverable 15,427.

Total Assets 440,527.

No Liabilities Listed -0-

Filed with Court October 13, 1987

at 2:33PM

Runa Triplett Assets

Savings Acct 18,000.

No liabilities Listed -0-



'ORC 2701.03 Disqualification of Judge:

When a judge of the court of common pleas is interested ... has a bias or prejudice either for or against... or is otherwise disqualified to sit ...may file an affidavit with the clerk of the supreme court the fact of the bias..or disqualification. The clerk shall forthwith forward the affidavit ... and notify the clerk of the common pleas and the clerk.. shall enter the fact of the filing on the trial docket. ... The chief justice... shall pass upon the disqualification....If..Justice ...finds the judge disqualified... Effective 4-4-85.

'1. (1982) Since only the chief justice or his designate may hear disqualification matters, a court of appeals is without authority to pass upon disqualification or to void a judgment of a trial court on that basis. Kettering v Berger, 4 O App 3rd 254, O BR 471, 443 (sic) NE2d 458(sic)"

22 Ohio Jurisprudence, page 231

"... and whenever a party asserts a claim of bias or preconceived judgement on the part of a judge or magistrate, such person must be afforded an opportunity to support his claim by the introduction of testimony⁷.

7 Moore v State 118 OS 487, 161
NE 532

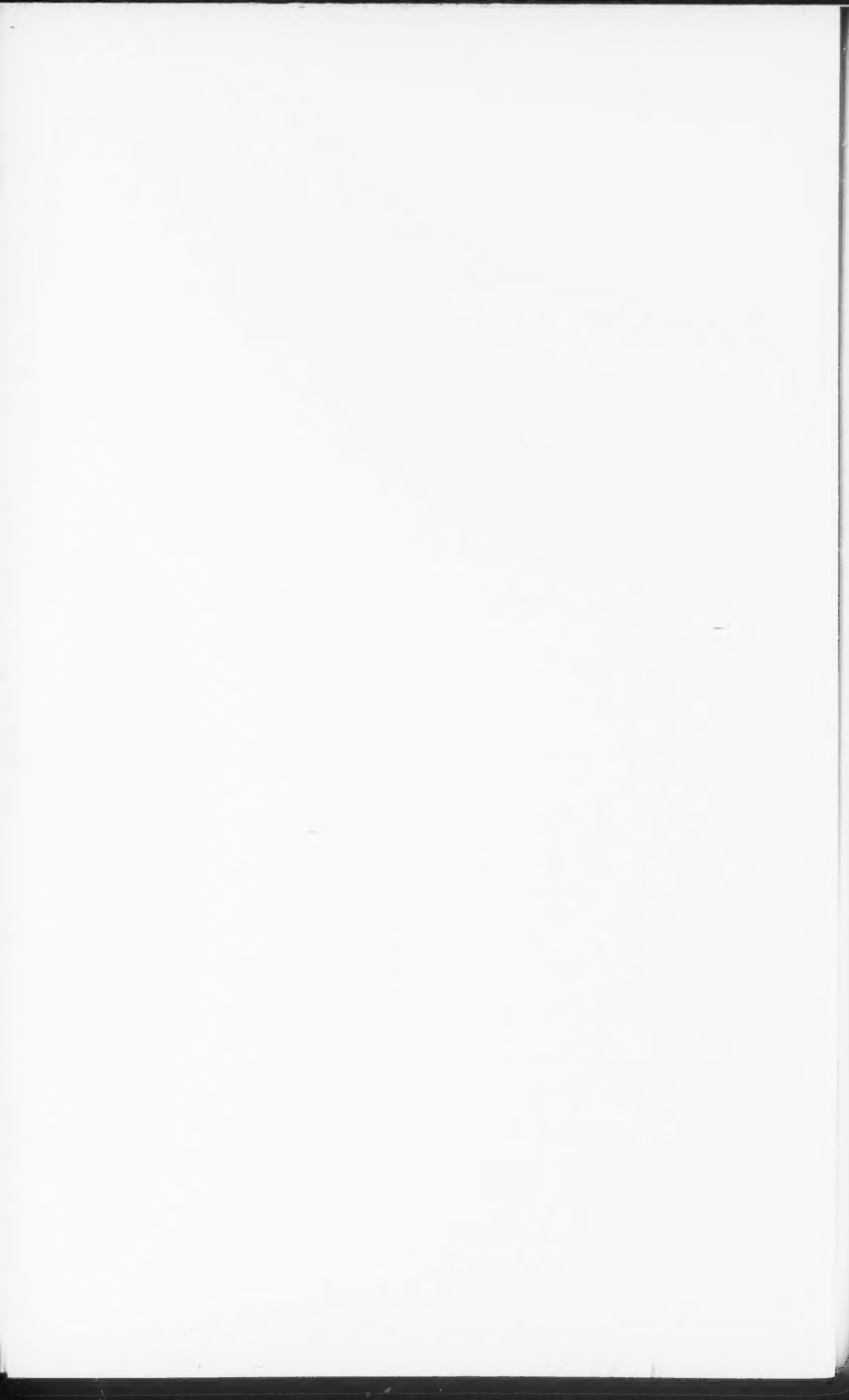
Appendix 2a

'Divorce 14. In action for divorce and alimony, court is without authority to make division of party's jointly owned property, 130 NE2d 146, Flatter v Flatter

'Federal Evidence Rule 605,
Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.'

'Divorce 8. The claims of creditors of one or both of parties to divorce may not be adjudicated and ordered paid out of parties funds, 130 NE2d 146, Flatter v Flatter,'



'A clerk of the Court of Common Pleas is required by long standing statutes endorse on each pleading or paper filed in his office the time and date of filing. However, the filing may be complete, statements in some earlier decisions have indicated, without the endorsement thereof. The endorsement is only evidence of the official filing, but it is not the only evidence; and in its absence other testimony may be admitted to show that such papers were filed. Furthermore, a paper which is shown to have been in the clerk's office is presumed to have been regularly filed.'

22 Ohio Jurisprudence 3rd Edition.



Case Continuance Requested

10/8/87 Number 86 DR 10 3353

Date Assigned 10/8/87

Date Continued to (blank) at blank.

Requested by J Triplett

Reason: 1 Motion for Physical Exam-
and 2. Allow Steven Daulton to
take or not take representing defendant
and 3. to stay evidence both parties
for the assurance of self incrimination
protection.

blank

Judge

Has this case been previously been
continued, if so, how many times: 1

/s/ James Triplett blank

James Triplett Opposing Counsel

Assignment Commissioner notified blank



" * * *

MOTION FOR DEFENDANT TO RESTRAIN BOTH
PLAINTIFF AND DEFENDANT FROM TESTIMONY
WHICH WILL INCRIMINATE OR TEND TO
INCRIMINATE BOTH PARTIES IN AN ADJUNCT
HIGHER FEDERAL COURT ISSUE ON FINANCIAL
AND COLLATURAL FACTS. * * *

/s/ James Triplett"



" * * *

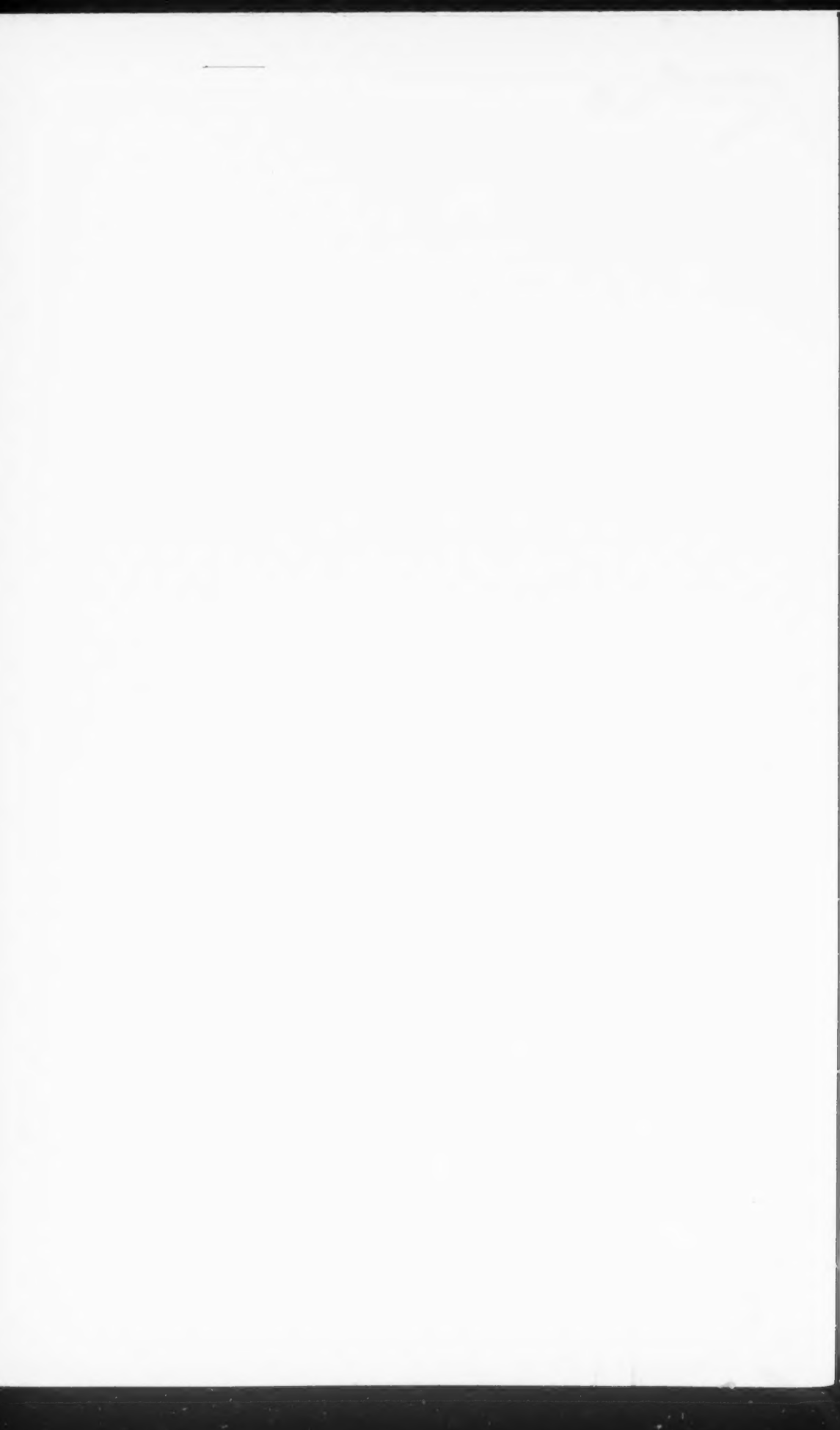
MOTION FOR PHYSICAL EXAMINATION

Herein defendant, James Triplett, moves the Court for a physical examination for plaintiff for good reason that * * *
ORC 2307.15 said mover is allowed such examination in order to properly and in good faith qualify such plaintiff to be a plaintiff * * *

/s/ James Triplett

Memorandum In Support, J Triplett upon request of the Court will give reasons for such physical examination. Defendant is further mindful of using the court for humiliation and embrassment of parties and the pln expects likewise the court to do the same standards as defendant is required to do in this instant case. Thank you.

/s/ James Triplett"



" ***

MOTION FOR CONTINUANCE, James
Triplett moves the court for a con-
tinuance for the good reason that MR
Steven Daulton, Counsel and At Law
Attorney is studying all issues
herein in a prompt manner to give all 1
defenses and counterclaims necessary
to give James Triplett all equitable
and legal defenses and counterclaims
necessary for fair and legal judgment
herein on this problem and matter before
this court.

/s/ James Triplett

MEMORANDUM IN SUPPORT, Mr Steven Daulton,
licensed attorney for Ohio has shown
an interest in representing James Triplett
and should be before this court to
express such above interest and respon-
sibility this Oct 8, 1987 day.

/s/ James Triplett

" * * *

AFFIDAVIT OF PREJUDICE AND OR BIAS

I, James Triplett, do hereby state
that Honorable George Twyford expresses
and shows a bias against defendant to
defendants rights and interests herein.

/s/James Triplett

Sworn and subscribed before me this
10th day of (sic) day of Oct 1987.

/s/ Kim M Halliborton
Notary, Life time
Commission "

Filed Oct 8, 1987 at 10:19Am with
Clerk of Court Enright and time
stamped

Appendix 9



IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
J Triplett, Plaintiff-Appellee
vs James Triplett, Defendant, Appellant
No 88AP 67

OPINION, Rendered Nov 3, 1988
Robert Bracco, for appellee
James triplett, Pro se

APPEAL FROM THE FRANKLIN COUNTY COURT
OF COMMON PLEAS, DIV OF DOMESTICE
RELATIONS

Grey, J.

This appeal arises out of a divorce action, but the substantive issue is the court's denial of defendant-appellant's motion for a new trial.

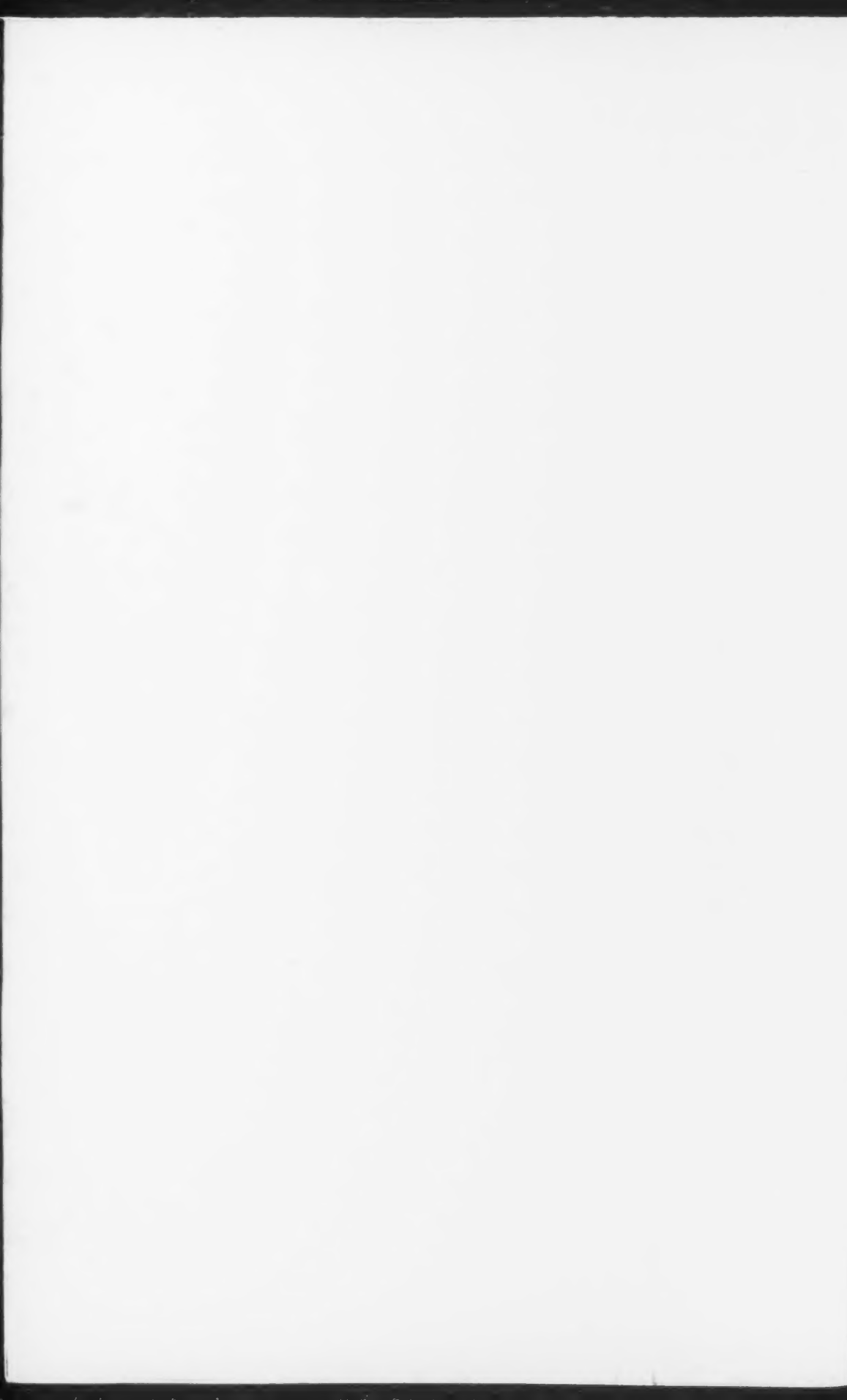
The record discloses the following facts. Appellee, R Triplett sued appellant, J Triplett, for divorce in Oct 1986. Appellant did not file any responsive pleading. The case was set for final hearing on October 8, 1987. On that day, appellant appeared and indicated to the court that he wanted a continuance and that he intended to file some motions. The court said it planned to proceed with the hearing as scheduled.

Appellant left the courtroom, apparently intending to file his motions, and encountered an attorney, Stephen Daulton. He asked Mr Daulton to re-

Present him. Daulton asked the court for a continuance. When advised that the court would not grant a continuance, Daulton declined to represent appellant. Appellant left the courtroom again, and went to the clerk of court's office to file his motions. Appellant did not inform the court or bailiff where he was going. While appellant was trying to get his motions filed, the court called the case. Appellant was not in the courtroom, or in the hallway outside the courtroom, and did not answer the bailiff's call, so the court proceeded to hear and decide the case without him.

Appellant obtained counsel and filed a motion for a new trial on three grounds. Since Appellant has filed twenty-three assignments of error, we feel it is necessary to point out that the motion for a new trial asserted only three grounds, thus:

"The defendant is entitled to a new trial for three independent reasons under Civil Rule 59. First, the court abused its discretion in not staying or continuing the trial until a later time or date. Second, the actions of plaintiff's (sic) counsel constituted misconduct.



Third, various other facts indicate that good cause exists to grant a new trial. *****

The trial court denied the motion for a new trial after a hearing at which appellant and others testified.

Appellant appeals, designating twenty-three assignments of error, some of which we will treat jointly. We begin with Assignment of Error No 23.

"23. Whether or not the Ohio Supreme abused its discretion by not having a hearing or contacting anyone connected to the facts of the judge prejudice claim or bias in order to determine defendant's right to an impartial judge?"

Article IV of the Ohio Constitution grants the Chief Justice authority to rule on and decide all claims of bias and requests to remove a judge for lack of impartiality. The Constitution grants this power only to the Chief Justice, and significantly, grants no court the authority to review the Chief Justice's decisions. We have no jurisdiction to consider this issue. Assignment of Error 23 is overruled.

Assignment of Error 19, 20, and 21 shall be treated jointly.

"19. Whether or not there was corroborating evidence at the Oct 8 1987 trial as to the grounds against defendant as to why plaintiff lawfully had a right to a divorce?"



"20. Whether or not there was corroborating evidence as to the financial net worth of defendant or defendant or his income producing ability to pay alimony?

"21. Whether or not there was evidence to substantiate the debt liability division as is shown on the alleged divorce decree"

Each of these three assignments of error relate to matters which occurred at the final hearing of this matter. No direct appeal was taken from the trial court's decision. Since we have no transcript of the hearing, and no basis to review the trial court's decision on the merits, Assignment of Error 19, 20, and 21 are overruled.

With these assignments of error out of the way, we turn now to consideration of the assignments of error that relate to the trial court's decision on the motion for a new trial.

Assignments of Error 1, 3, and 4 which deal with the motions appellant attempted to file, shall be treated jointly.

"Whether or not defendant's motions, three, were properly before the court on October 8, 1987?

"Whether or not the court should have granted a continuance so that a physical and mental examination of plaintiff could be administered before any further court proceedings took place?

Whether or not the court should have



stayed the proceedings because of a 5th amendment right being invoked by plaintiff and defendant on a federal level proceeding?"

The trial court found correctly, we believe, that these motions were never filed. Appellant admitted as much in the hearing on the motion for a new trial when he testified that the clerk of the courts refused to accept his motions for filing.

Even if the motions had been filed, we find no prejudice to appellant. The real question here is this: May a party take no responsive action to a complaint, then show up in court on the day of final hearing with pretrial motions and insist that the court not proceed? This was an obvious delaying tactic which the trial court properly rejected. Assignment of Error 1, 3, and 4 are not well-taken and are overruled.

These three assignments of error are related to Assignment of Error 22, which is essentially a claim of a denial of due process.

"22. Whether or not the trial judge gave and protected defendant's rights and responsibilities under the 5th, and 14th Amendments of the US Const., and other similar rights and responsibilities and privileges under the Ohio Constitution as guaranteed?

Due process generally means that a party has a right to be heard and a right to have his case decided on the merits; but due process is a two-edged sword. Appellee had as much right to due process as appellant; as great a right to have her case heard and decided. To allow further delay because of appellant's failure to answer, to obtain counsel, to timely file pretrial motions, or to even appear at the hearing, would have been a denial of appellee's right to due process. Assignment of Error 22 is overruled.

Assignments of Error 2 and 5 deal with the denial of appellant's request for a continuance on the day of trial.

"2. Whether or not the court should have granted a continuance for an attorney to represent defendant?"

"5. Whether or not the court should have continued the case until later in the day of Oct 8, 1987 with pro se counsel by defendant?"

The granting of a continuance is within the sound discretion of the court. Rule 7 of the Rules of Superintendence for the Courts of Common Pleas provides in part:

"Conflict of trial court assignment dates, continuances and engaged counsel

"(A) Continuances; Granting of:

"The continuance of a scheduled trial or hearing is a matter within the sound discretion of the trial court.

Appendix 15



"No party shall be granted a continuance of a trial or hearing without a written motion from the party or counsel stating the reason for the continuance. No court shall grant a continuance to any party at any time without first setting a definite date for the trial or hearing."

Regarding the request for a continuance based on the lack of counsel, appellant offered no explanation why he was unable to obtain counsel. He did testify that he had talked to several attorneys, but gave no reason why he never retained one. Regarding the claim that proceeding on the divorce action would jeopardize his Internal Revenue Service case, it is incumbent on the party with the conflict to request a continuance before the hearing date. *Touche Ross v Landskroner*(1984), 20 Ohio App 3rd 354; *Alex N Sill Co v Pazio*(1981), 2 Ohio App 3rd 65. Appellant did not, prior to trial, file a motion for a continuance supported by an affidavit showing his inability to obtain counsel or the potential conflict. Assignments of Error 2 and 5 are overruled.

Assignments of Error 6,7,8,9, and 17 shall be treated jointly.

"6.Whether or not the court properly called the case for trial?

"7.Whether or not the defendant was outside the immediate area of the courtroom?



"8. Whether or not the defendant gave the court an excusable explanation for his absence for his not being inside the courtroom?

"9. Whether or not the court abused its discretion when plaintiff for counsel claimed he did not know where defendant was when asked by the court on Oct 8, 1987?

"17. Whether or not trial court should have granted defendant's motion for a new trial by the weight of the evidence presented at that time?

These five assignments of error all go to the weight of the evidence offered at the hearing on the motion for a new trial. The weight or credibility of witness testimony is for the trial court to decide. In *Levin v Nielsen* (1973), 37 Ohio App2nd 29, 31, it was held;

"*** In weighing the evidence, we will not determine the facts de novo; we cannot substitute our view of the testimony for that of the trier of fact which has heard the witnesses and observed their demeanor. ****"

The trial court found, and the record supports the finding, that appellant had an adequate opportunity to be heard at trial but voluntarily left the courtroom. Assignments of Error 6, 7, 8, 9, and 17 are without merit and are overruled.



Assignment of Error 10,13,15, and 16 shall be treated jointly since they raise the same issue, i.e. that counsel for appellee acted improperly.

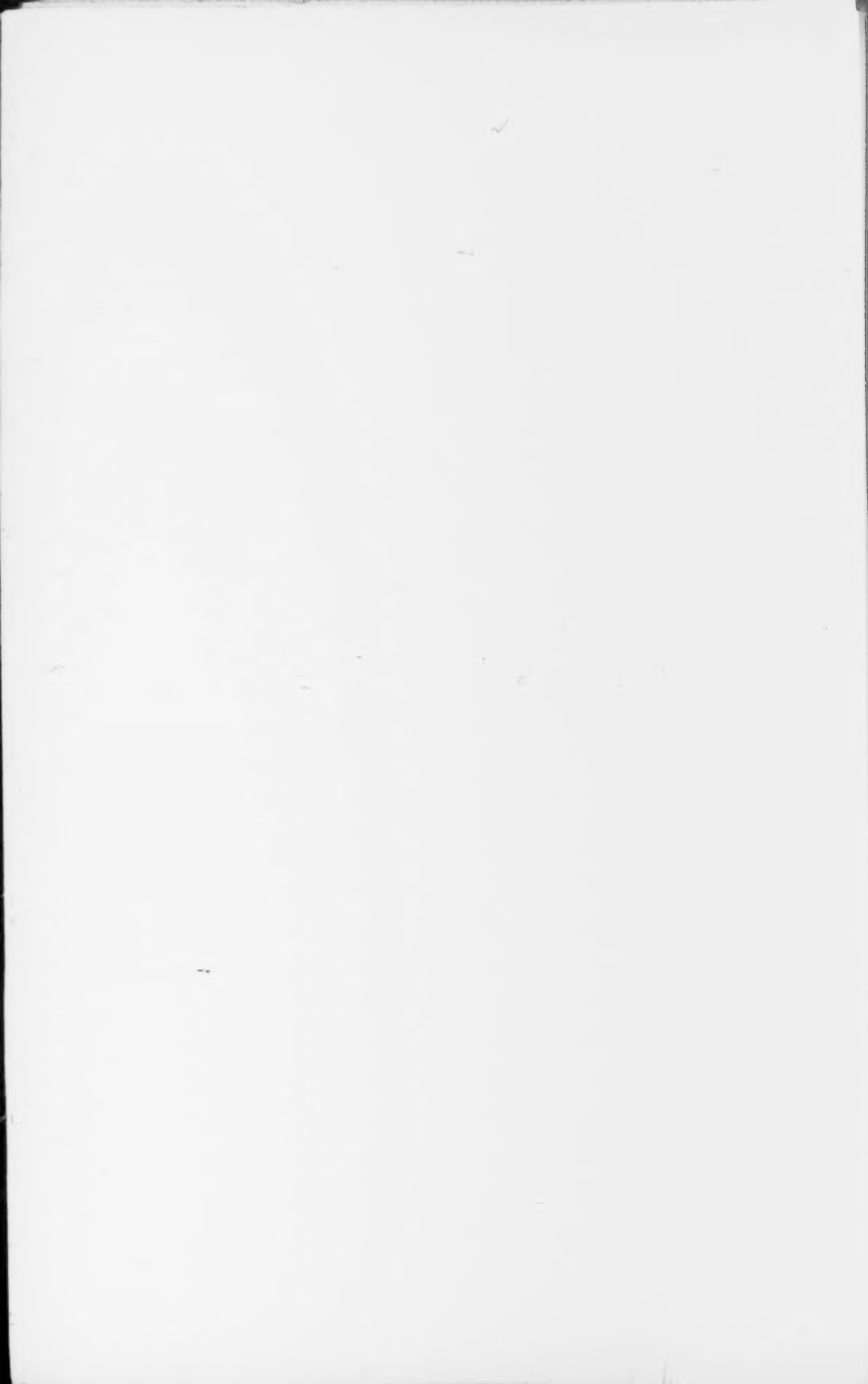
"10. Whether or not party attorney must not obstruct justice and whether or not plaintiff party attorney must assist in the proper administration of justice by possession of information taht procedurally assists the court in its judicial (sic) responsibilities?

"13.Was the appelle-plaintiff(sic) attorney giving material perjured testimony?

"15.Was appellee-plaintiff attorney or trial judge required to decide after the said attorney testified to decide whether or not said attorney was in violation of the DR 5-102 and/or exempt under DR 5-101 rules of minimum bar conduct?

"16.Should appellee-plaintiff attorney and did attorney withdraw, if decided he violated DR 5-101 exceptions?

Reduced to the simplest terms, these four assignments of error assert that somehow this is all appellee's counsel's fault. Appellant testified that counsel knew where appellant was when the case was called. Even if that were true, the court held that it is not the function or the duty of opposing counsel to see that the opposing party is in court.



It is particularly anomalous that appellant insists that opposing counsel had the duty to inform the court of his (appellant's) whereabouts, but feels he himself had no duty to keep the court informed.

As to the claim of violations of the Code of Professional Responsibility this is the purest form of invited error. Appellant called counsel Bracco to be a witness at the new trial hearing. Bracco vigorously objected, but later consented to testify. Any error arising out of Bracco's appearance as a witness was invited error. Assignments of Error No 10, 13, 15, and 16 are without merit and are overruled.

Assignments of Error No 11, 12, 14 and 18 shall be treated jointly.

"11. Whether or not the trial judge was testifying and contradicting other eye witnesses (sic) or was the judge Nunc pro Tunc (correcting the records for omission)?

"12. Was the trial judge giving material perjured testimony?

"14. Was the trial judge disqualified under Judicial (sic) Canon 3C(1)(d) (1), being a material witness and should have disqualified himself upon his contradicting prior eye witness (sic) testimony?



'18. Whether or not the trial judge erred in not allowing the court's bailiff to testify as to how she 'called' the case when there was testimony of eye witnesses (sic) stating the case was not called as the trial judge testified it was called?".

We note that the judge did not testify in this case. Rather, at the end of the hearing, appellant's counsel asked for closing argument to summarize the evidence presented. During appellant's counsel's summary, the trial judge interjected comments several times. It might have been better practice for the court to allow counsel to complete his summary without interruption. Nonetheless, the court was correct in pointing out to appellant's counsel that he had not met his burden of proof on the motion for new trial, and that he was arguing facts which were clearly not established by the evidence or which were contradicted by the record.

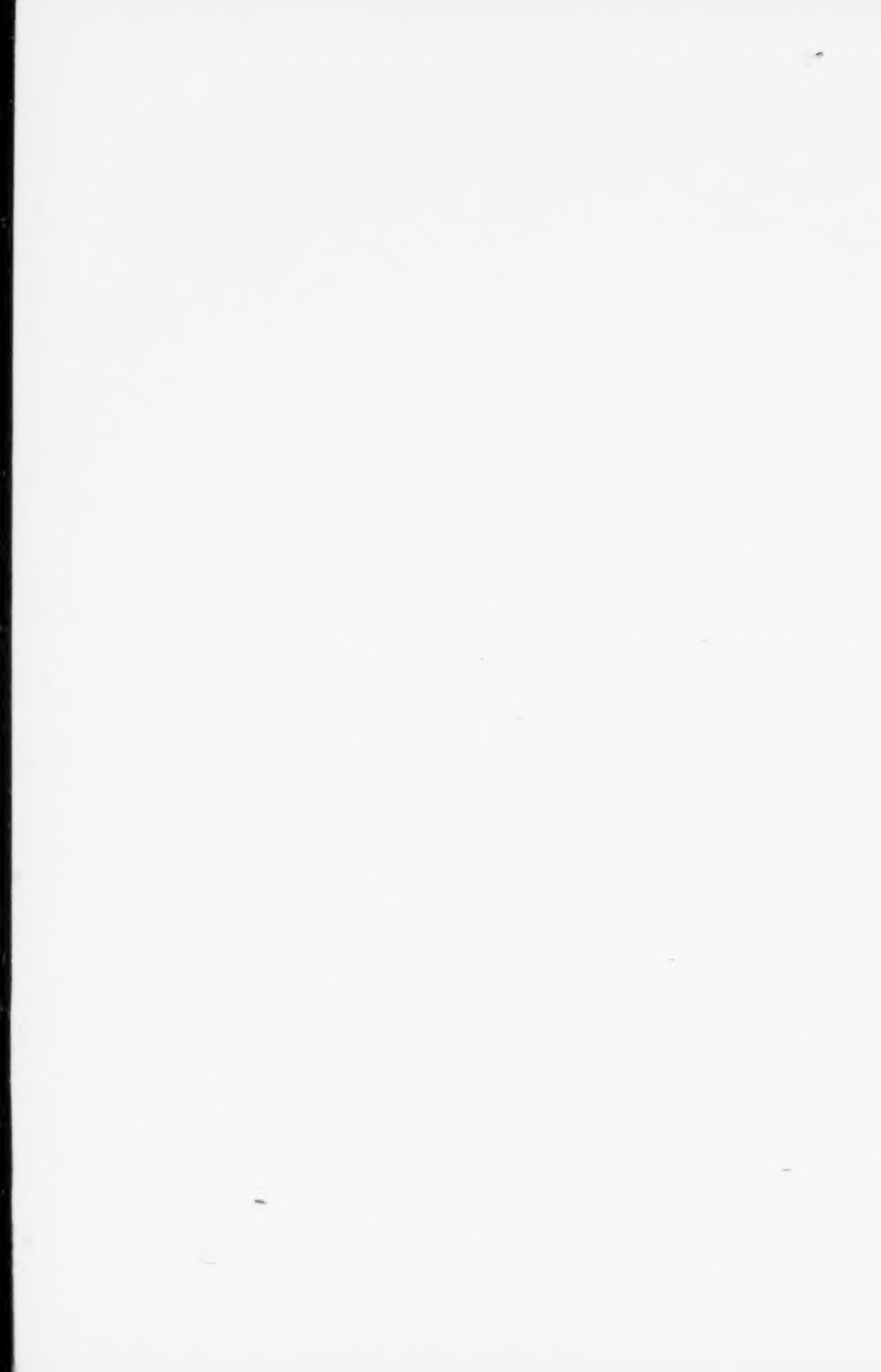
Assignments of Error 11,12,14, and 18 are wholly without merit and are overruled.

For the foregoing reasons, all of appellant's assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas, Division,



of Domestic Relations, is affirmed.

Judgment affirmed /s/ 3 judges



Case # 86 DR 10 3430
Judge Twyford
Findings of Facts and
Conclusions of Law

This matter came before this Court for Oral Hearing and review upon Defendants Motion for a new trial and upon Plaintiff's Contra Memorandum on a uncontested divorce granted on Oct 8, 1987 by this Court upon the Original Complaint of the Plaintiffs.

From the facts presented and review of the Court Record the Court finds that the Defendant received proper notice from this Court of the date and time of the final hearing scheduled on this divorce action that being set for Oct 8, 1987, at 9:00AM in Courtroom 6C, 6th floor of the Municipal Court Building. The Court further finds from the evidence and the Court record that no Answer or Counterclaim was filed on behalf of the defendant despite the fact that proper service was made upon Def, nor was there any legal representative of record for defendant. The Court further finds that despite the Def's assertions that three motions were given to the plaintiff prior to trial, no evidence was presented that any Motions



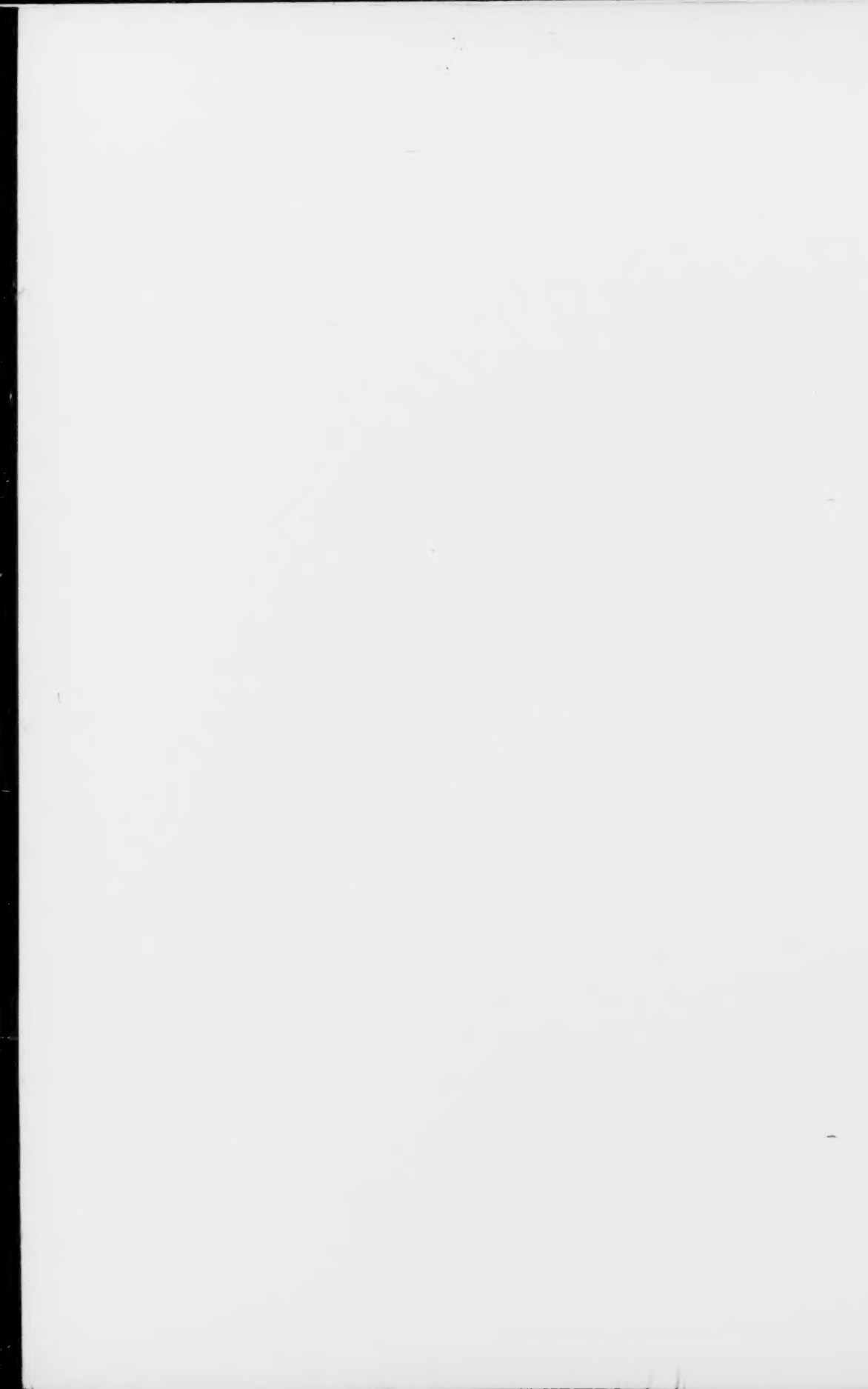
were given to the Plaintiff prior to trial, no evidence was presented that any Motions were properly served upon Plaintiff nor does the Court reflect that any Motions were filed with the Court prior to this trial.

From evidence presented, def. stated he voluntarily left the sixth floor prior to the trial starting and further finds that def did not inform the Court, the bailiff, or opposing counsel of his whereabouts or intentions. The Court also finds from the facts presented and from its own recollection that the case was called and that Def was not present in the Courtroom or immediately outside the Courtroom when this case was called and failed to give any excusable explanation for his absence. Defendant alleges that the Court abused its discretion and the Pln atty is quilty of misconduct in failing to inform the Def of the beginning of the trial and in failing to wait for him to show up in the courtroom and in in failing to inform the Def not to leave the 6th floor of the Courthouse.

The Court finds this argument not well taken as follows: and further finds the case was indeed properly called before this Judge that the def failed to



be present when the case was called and failed to inform the Court of his whereabouts. The Court cannot and does not find any case law, statute, or procedural law requiring the Court or Opposing Counsel to track down and absent party to a divorce action when that party has been properly notified of the time and place of that hearing as the Court record reflects in this case. Nor does the burden of responsibility of a party to be present in Court when notified shift to the Court or Opposing Counsel. The Court finds from the testimony of Plaintiff's Atty and the Courts own recollection that this case was properly called and that Pln counsel stated he did not know where def was and that the Court had no idea where the def was and that the court had no idea where the def was or whether in fact he was in the courthouse at all, nor what his intentions were. The Court finds ther is no obligation or duty of a Court or Opposing Counsel to inform parties to an action not to leave a courtroom where they are properly notified to appear. The Court also finds that it does not and cannot antic-



tipate the intentions of an absent party or its legal representative. In this case the court finds neither was done by def.

The def counsel states that a continuance should have been granted based upon 3 motions that def served upon pln and that he was intending to file the morning of the trial and attaches what purports to be 3 Motions of Def to his Memorandum. Again the court finds from the facts presented and the evidence heard and from its own recollection and review of the court record that none of these motions were filed with the court prior to trial and there is no evidence sufficient to support the allegation that pln was properly served, or served at all with any motions prior to trial and the court finds that it can only speak from its record and therefore cannot properly consider any motions not properly filed, served, or before it at the proper time. The Court therefore cannot properly consider what a party may or may not have done, when no evidence in the record reflects the intention of parties and civil procedure has not been complied with. Finally the def requested leave to submit additional information as to whether the court bailiff called the



case and to present statement by def witnesses that the case was not called. The court finds this motion not well taken and denies same. The court being fully informed and present when this case was heard finds from its own recollection of facts and from the testimony of pln atty that the case was properly called by the court's bailiff and that def has had ample time to present all its facts to this court of which this court is fully cognizant.

Finally the court finds that the def does not present any evidence or facts sufficient to support grounds for a new trial under Civil Rule 59A and further finds that any accident or surprise on the part of the def could have been averted against by def exercising ordinary prudence which he failed to do.

THEREFORE, THE COURT ORDERS AND DECREES from the pleadings, evidence, facts, and the Courts own recollection that the def motion for a new trial and motion to submit additional evidence is not well taken and hereby denies same

signed

Court of Common Pleas filed Oct 9, 1987

Divorce Decree, excerpts

Alimony: "\$1,200.00 per month till death

IV. Taxes: It is further Ordered, adjudged, and decreed that both husband and wife shall file separate tax returns *** and that husband shall save harmless wife on any and all tax liabilities and penalties from 1987 to the time of marriage.

V REAL PROPERTY: It is ** that husband and wife are the joint owners of *** Avalon Road. And that wife is hereby awarded all the husband's right, title, and interest in ***".

" *** It is further Order *** that the parties jointly owning an apartment bldg **** and be listed for sale *** In lieu of selling this bldg, husband to have the option to purchase the wife's equity in the bldg at the sum of \$50,000. payable to wife ***".

VI Autos: It is further ordered *** that wife shall have ownership *** of **** Cadillac *** Datsun *** defendant is ordered to execute title *** within 5 days ***.

VII Household Goods and Furniture: It is *** ordered *** household goods and



furniture will be equally divided ***".
VIII Debts and Expenses: "*** It is
further ordered that husband shall be
responsible for all martial debts of
this marriage to the date of execution
of this divorce decree.

sign judge

pln atty signed

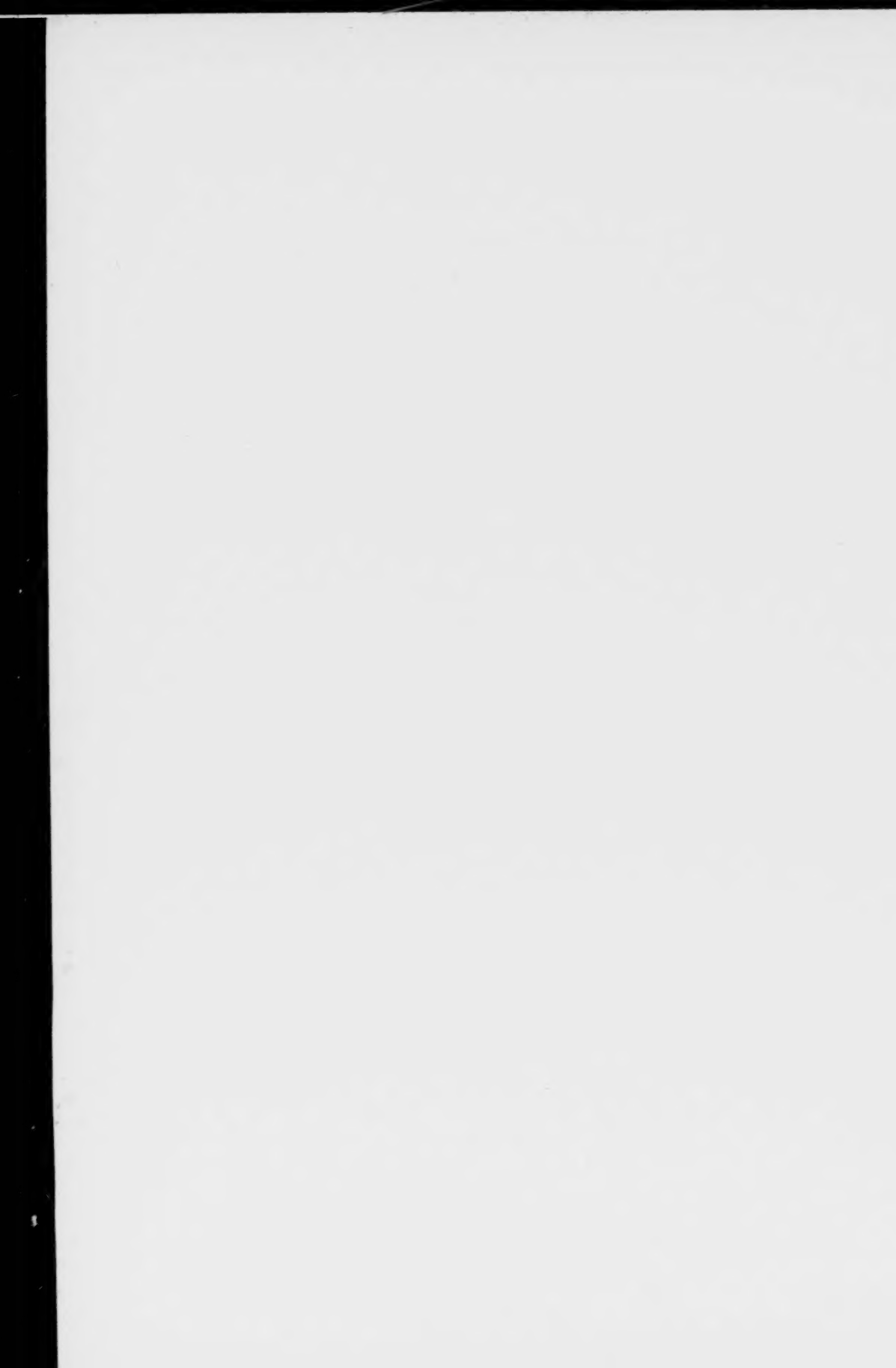
pln signed



Rule 17, Franklin County Common
Pleas Domestic Relations Div.

Rule 17 Financial Disclosure Affidavit
Required at time of filing

Upon the filing *** shall file an
affidavit listing all income, assets,
and liabilities of the parties whether
jointly or separately held ***."



IN THE COURT OF COMMON PLEAS OF
FRANKLIN COUNTY, OHIO

**** Assets and Liabilities as
of 10/16/86 *** INSTRUCTIONS
YOU ARE TO DISCLOSE ALL SUCH IN-
FOR THAT IS REQUESTED HEREIN AND
BY RULE 17 ***BE SPECIFIC , LIST
ALL ASSETS, LIABILITIES, ***
Liabilities *** Taxes -0-

signed Runa Triplett, Pln
notary Robert Bracco

"The Supreme Court of Ohio, 1989 Term
To Wit: Feb 15, 1989, Case 89-10, Entry
R Triplett, Appellee, v J Triplett,
Appellant, Upon consideration of the
motion for an order directing the Court
of Appeals for Franklin County to cert-
ify its record, and the claimed appeal
as of right from said court, it is ord-
ered by the Court that sua sponte for
the reason that no substantial con-
stitutional question exists therein.
Costs: Motion Fee, \$20.00, paid by J
Triplett, (Court of Appeals #88AP67)
/s/ Thomas Moyer, Thomas J Moyer,
Chief Justice